



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JUNE 27, 2022

IN THE MATTER OF:

Appeal Board No. 621557

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective September 24, 2020, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing. The Commissioner of Labor objected that the hearing request was not made within the time allowed by statute.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances on behalf of the claimant and the employer. By decision filed February 9, 2022 (), the Administrative Law Judge sustained the Commissioner of Labor's timeliness objection and continued in effect the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The Department of Labor issued a Notice of Determination with a mail date of December 16, 2020. The claimant received it in the mail a few days later. She read the instructions saying that she had 30 days to request a hearing. The instructions provided guidance for contacting an attorney. She also read the page of the Claimant Information Handbook that provided instructions for submitting a hearing request by fax or mail. Using the information provided by the Department of Labor, the claimant contacted an attorney's office within a week or so of receiving the Notice of Determination, and she spoke with the attorney within a couple of days of

calling him. The attorney instructed the claimant to request a hearing. She submitted a hearing request by fax and mail and advised the attorney that she had done so. As it was still December 2020, the claimant and her attorney anticipated that her hearing would be scheduled for late February 2021. When the claimant did not receive a response to her hearing request, she tried without success to follow up by phone.

In a subsequent hearing request submitted December 14, 2021, the claimant explained that this request was being submitted after the 30 days had elapsed because: "i did send the hearing request in immediately however it was during the covid pandemic, therefore the dept was closed to the public as well as skeleton crews which lead to not being able to get anyone thru phone calls and not having enough people in the offices to handle the work load which in turn means i never heard about the hearing either way."

OPINION: The credible evidence establishes that the claimant received the Notice of Determination within a few days of that document's mail date of December 16, 2020. As the claimant has not identified a specific date when she received the Notice of Determination, she is deemed to have received it five business days after it was mailed, which was December 23, 2020. She had 30 calendar days after that date, or until January 22, 2021, to request a hearing. The claimant credibly testified that she contacted an attorney, was instructed to request a hearing, and did so, all by the end of December 2020. She further testified that she submitted her hearing request by fax and mail, and we note that the Claimant Information Handbook provided instructions regarding these methods. Finally, the claimant's subsequent hearing request, submitted December 14, 2021, specifically refers to the original request that she submitted "immediately." On this record, we find that the claimant submitted her hearing request in December 2020, well before her time to do so ended on January 22, 2021. Accordingly, we conclude that the claimant's hearing request was timely, and the claimant is entitled to a hearing on the initial determination.

Our review of the record, however, reveals that the case should be remanded to hold a hearing concerning the initial determination of voluntary separation from employment without good cause, as no testimony or evidence was taken on this issue. The parties shall be afforded an opportunity to present testimony and evidence on this issue and shall be afforded an opportunity to cross-examine opposing witnesses.

DECISION: The decision of the Administrative Law Judge, insofar as it sustained the Commissioner of Labor's timeliness objection, is reversed.

The decision of the Administrative Law Judge, insofar as it continued in effect the initial determination of voluntary separation from employment without good cause, is rescinded.

The Commissioner of Labor's timeliness objection is overruled.

Now, based on all of the foregoing, it is

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issue of voluntary separation from employment without good cause, only, upon due notice to all parties and their representatives; and it is further

ORDERED, that the Notice of Hearing shall identify as the Purpose of Hearing the remanded issue of voluntary separation from employment without good cause, only; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the remanded issue only, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER